

Rule 42. Permanent Placement and Termination of Parental Rights Matters; Post-Permanency Review Requirements**42.01 Timing**

Subdivision 1. Timing of Required Permanency Proceedings for Child in Need of Protection or Services Matters. In the case of a child who is alleged or found to be in need of protection or services, ordered into foster care or the home of a noncustodial or nonresident parent, and where reasonable efforts for reunification are required, the first order placing the child in foster care or the home of a noncustodial or nonresident parent shall set the date or deadline for:

(a) the 12-month admit/deny hearing commencing permanent placement determination proceedings required under Rule 42.01, subdivision 5(b); and

(b) the 6-month permanency progress review hearing required under Rule 42.01, subdivision 5(a).

Subd. 2. Timing of Hearing for Child on a Trial Home Visit. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, within twelve (12) months of the date a child is placed in foster care the court shall hold a hearing pursuant to Rule 42.13 to determine the continued status of the child.

Subd. 3. Calculating Time Period. The child shall be considered placed in foster care or the home of a noncustodial or nonresident parent at the earlier of:

(a) the date of the child's placement in foster care or in the care of a noncustodial or nonresident parent by court order; or

(b) sixty (60) days after the date on which the child has been voluntarily placed in foster care as a result of a voluntary placement agreement between the parents and the responsible social services agency.

Subd. 4. Accumulation of Out-of-Home Placement Time. The time period requiring the court to commence permanent placement determination proceedings shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods during which a child is placed in foster care or in the home of a noncustodial or nonresident parent are accumulated;

(b) if a child has been placed in foster care within the previous five (5) years under one or more previous petitions, the lengths of all prior time periods during which the child was placed in foster care within the previous five (5) years are accumulated. If a child under this clause has been in foster care for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination; and

(c) time spent on a trial home visit under Minnesota Statutes, section 260C.201, subdivision 1, paragraph (a), clause (3), counts toward the requirement that the court commence permanency proceedings under this rule. However, if the child is on a trial home visit at the time the court is required to commence permanency proceedings, the court may conduct the hearing under Rule 42.13. If a trial home visit is ordered or continued at the time set for the court to commence permanency proceedings or if the child is ordered returned to the parent's home as a trial home visit at the conclusion of permanency proceedings under this rule, and the child is subsequently returned

to foster care, the court shall re-commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

Subd. 5. Notification of Timing. Not later than when the court sets the date or deadline for the admit/deny hearing commencing the permanent placement determination proceedings and the permanency progress review hearing, the court shall notify the parties and participants of the following requirements:

(a) **Requirement of Six (6) Month Hearing.** The court shall conduct a permanency progress review hearing to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services not later than six (6) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.

(b) **Requirement of Twelve (12) Month Hearing.** The court shall commence permanent placement determination proceedings to determine the permanent status of the child not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.

Subd. 6. Timing for Cases Where Reasonable Efforts for Reunification Are Not Required. When the court finds that the petition states a prima facie case that one or more of the circumstances under Minnesota Statutes, section 260.012, paragraph (a), and Rule 30.09, subdivision 3, exist where reasonable efforts for reunification are not required, the court shall order that an admit/deny hearing under Rule 34 be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. Unless a permanency or termination of parental rights petition under Rule 33 has already been filed, the county attorney requesting the prima facie determination shall file a permanency or termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

1999 Advisory Committee Comment

Rule 42.01 is consistent with Minnesota Statutes, section 260C.201, subdivision 11, which became effective July 1, 1999. The statute provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed or within twelve (12) months of the child's removal if the child is eight (8) years of age or older at the time the petition is filed.

42.02 Purpose of Permanency Progress Review Hearing and Permanent Placement Determination Proceeding

Subdivision 1. Permanency Progress Review Hearing. The purpose of the permanency progress review hearing is to review the progress of the case, the parent's progress on the case plan or out-of-home placement plan, and the provision of services by the responsible social services agency. The court shall determine whether the parents or legal custodian have maintained regular contact with the child, whether the parents are complying with the court-ordered case plan or out-of-home placement plan, and whether the child would benefit from continuing this relationship.

Subd. 2. Permanent Placement Determination Proceeding. The purpose of permanent placement determination proceedings is to determine the permanent status of a child, including a review of the progress of the case and the parent's progress on the case plan or out-of-home placement plan, the services provided by the responsible social services agency, and whether or not the conditions that led to the child's placement in foster care or in the home of a noncustodial or

nonresident parent have been corrected so that the child can return to the care of the parent or custodian from whom the child was removed. The court shall determine whether the child shall be returned home or, if not, order permanent placement of the child consistent with the child's best interests and the pleadings and proof presented to the court.

Subd. 3. Matters Where Reasonable Efforts for Reunification Are Not Required. The purpose of holding the trial on the petition within ninety (90) days of the prima facie determination permitted under Rule 30.09, subdivision 3, and Minnesota Statutes, section 260.012, in cases where reasonable efforts for reunification are not required is to ensure timely decision by the court that either:

(a) there is a sufficient evidentiary basis for an order for termination of parental rights or permanent placement of the child away from the parent and for finding the order for termination of parental rights or permanent placement away from the parent is in the child's best interests; or

(b) there is an insufficient evidentiary basis for the order or that the order is not in the best interests of the child.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

42.03 Procedures for Permanency Progress Review Hearing and Permanent Placement Determination Hearing

The purpose and procedures governing a permanency progress review hearing required within six (6) months of removal from the care of a parent are set out at Minnesota Statutes, section 260C.204.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

42.04 Procedures for Permanent Placement Determination

The following procedures govern permanent placement determination proceedings:

(a) **Petition.** Unless the responsible social services agency recommends return of the child to the custodial parent or files a petition and motion pursuant to Rule 42.14, not later than thirty (30) days prior to the admit/deny hearing required in paragraph (b) the responsible social services agency shall file with the court a petition required under Rule 33.01 to establish the basis for the juvenile court to order permanent placement of the child according to Rules 42.06 to 42.12. A party other than the responsible social services agency may file a petition to transfer permanent legal and physical custody to a relative, but the petition must be filed not later than the date for the required admit-deny hearing under Minnesota Statutes, section 260C.507; or if the agency's petition is filed under Minnesota Statutes, section 260C.503, subdivision 2, the petition must be filed not later than thirty (30) days prior to the trial required under Minnesota Statutes, section 260C.509.

(b) **Admit/Deny Hearing on Permanency Petition.** The court shall commence and complete an admit/deny hearing pursuant to Rule 34 on the permanency petition, termination of parental rights petition, or petition for alternative permanent placement relief under Rule 33.01 not later than twelve (12) months after the child is placed in foster care or in the care of a noncustodial or nonresident parent.

(c) **Trial.** The court shall commence and complete any trial on the permanency petition within the time specified in Rule 39.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

42.05 Permanent Placement Findings and Order

Subdivision 1. Findings. Except in the case of an order terminating parental rights governed by Rule 42.08, an order permanently placing the child out of the home of the parent or guardian shall include the following findings:

- (a) how the child's best interests are served by the order;
- (b) the nature and extent of the responsible social services agency's reasonable efforts, or in the case of an Indian child active efforts, to reunify the child with the parent or guardian where reasonable efforts are required;
- (c) the parent's efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
- (d) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Subd. 2. Order. At the conclusion of the permanent placement determination proceedings the court shall order one of the following permanency dispositions:

- (a) Return the child home pursuant to Rule 42.06;
- (b) Terminate parental rights pursuant to Rule 42.08;
- (c) Transfer permanent legal and physical custody to a relative pursuant to Rule 42.07;
- (d) Guardianship and legal custody to the Commissioner of Human Services upon consent by the child's parent to adopt pursuant to Rule 42.09;
- (e) Permanent custody to the agency pursuant to Rule 42.11; or
- (f) Temporary legal custody to the agency for a specified period of time pursuant to Rule 42.12.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014.)

42.06 Return Child Home

If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services. The court may order:

- (a) the child returned on a trial home visit pursuant to Rule 41.05, subdivision 2(a)(3);
- (b) the child placed under the protective supervision of the responsible social services agency under Rule 41.05, subdivision 2(a)(1); or

(c) monitoring of the parent's continued ability to maintain the child safely in the home under Rule 41.05, subdivision 2(a)(6).

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009.)

42.07 Transfer of Permanent Legal and Physical Custody to a Relative

Subdivision 1. Order. The court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to Minnesota Statutes, section 260C.515, subdivision 4.

Subd. 2. Jurisdiction Terminated Unless Retained. If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order.

Subd. 3. Further Hearings if Jurisdiction Retained. If the court retains jurisdiction, the court may order further in-court hearings at such intervals as it determines to be in the best interests of the child pursuant to subdivision 7.

Subd. 4. Modification of Order. An order transferring permanent legal and physical custody of a child to a relative may be modified using the standards under Minnesota Statutes, sections 518.18 and 518.185. The motion shall be filed in the court file in the county where the order was issued and, if appropriate, a party may file a motion to transfer venue. If the order was filed prior to August 1, 2012, the motion to modify shall be filed in family court. If the order was filed on or after August 1, 2012, the motion to modify shall be filed in juvenile court. Notice of any motion to modify an order for permanent legal and physical custody issued under this rule and Minnesota Statutes, section 260C.515, subdivision 4, shall be provided by the court administrator to the responsible social services agency which shall be a party to the proceeding pursuant to Minnesota Statutes, section 260C.521, subdivision 2.

Subd. 5. Voluntary Transfer of Custody. A parent or legal custodian may voluntarily agree to transfer permanent legal and physical custody of the child to a fit and willing relative by either filing a petition to transfer permanent legal and physical custody pursuant to Rule 33.01 and establishing that such transfer is in the child's best interests under Minnesota Statutes, section 260C.515, subdivision 4, or by entering an admission to such a petition filed by another party and stating, under oath, that the parent or legal custodian believes such a transfer is in the child's best interests and establishes good cause for the transfer on the record before the court.

Subd. 6. Order Requirements. In addition to the findings required under Rule 42.05, the order transferring permanent legal and physical custody shall address parental and sibling visitation and ongoing services to be delivered to the child while the juvenile court has jurisdiction, and shall state whether the transfer was voluntary or involuntary. The order shall state whether a child support order exists or if the issue is reserved for future determination.

Subd. 7. Review for a Child Who is with a Relative Who Has Permanent Legal and Physical Custody. When the court orders transfer of permanent legal and physical custody to a relative under this Rule, the court may retain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian. The court may conduct reviews at such frequency as the court determines will serve the child's best interests for the purpose of ensuring:

(a) appropriate services are delivered to the child and the permanent legal and physical custodian; or

(b) conditions ordered by the court relating to the care and custody of the child are met.

(Added effective August 1, 2009; amended effective July 1, 2014.)

42.08 Involuntary and Voluntary Termination of Parental Rights Proceedings

Subdivision 1. Involuntary Termination of Parental Rights Proceedings. Upon petition pursuant to Minnesota Statutes, section 260C.301, subdivision 1, paragraph (b), and after an admit/deny hearing under Rule 34 or a trial under Rule 39, as appropriate, the court may issue an order granting or denying a petition to involuntarily terminate parental rights which shall include the following:

- (a) a statement of the facts upon which the court bases its order;
- (b) findings regarding how the order is in the best interests of the child;
- (c) findings regarding the responsible social services agency's reasonable efforts, or, in the case of an Indian child active efforts, to reunify the child and the parent or that reasonable efforts for reunification are not required under Minnesota Statutes, section 260.012;
- (d) if the child is an Indian child, findings regarding the testimony, pursuant to Rule 49, of at least one qualified expert witness;
- (e) if termination of parental rights is ordered, the specific statutory grounds under Minnesota Statutes, section 260C.301, subdivision 1, paragraph (b), upon which the court issued its order and the facts supporting those grounds; and
- (f) the effective date of the order.

Subd. 2. Voluntary Termination of Parental Rights Proceedings.

(a) **Petition and Consent.** Upon petition pursuant to Minnesota Statutes, section 260C.301, subdivision 1, paragraph (a), and voluntary consent of the parent, the court shall conduct a hearing regarding the voluntary termination of the person's parental rights.

(b) **Oath.** At the hearing, the parent shall be placed under oath for the purpose of:

- (1) asking that the petition be granted; and
- (2) establishing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

(c) **Hearing.** During the hearing, the court shall:

- (1) advise the parent of the right to representation by counsel pursuant to Rule 25;
- (2) determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination;
- (3) inquire as to the true voluntary nature of the parent's consent; and
- (4) obtain a waiver of the right to trial on the involuntary petition when the parent is voluntarily consenting to termination of parental rights after an involuntary termination of parental rights petition has been filed.

(d) **Voluntary Termination.** If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and

whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

Subd. 3. Voluntary Termination of Parental Rights in Matters Governed by the Indian Child Welfare Act. When the child is an Indian child and the matter is governed by the Indian Child Welfare Act, 25 U.S.C. section 1913, the following procedures apply to a voluntary termination of parental rights by an Indian parent.

(a) **Procedures for Consent.** The consent to terminate parental rights by the parent shall not be valid unless:

(1) executed in writing;

(2) recorded before the judge; and

(3) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was translated into a language that the parent or Indian custodian understood.

(b) **Timing of Consent.** Any consent to termination of parental rights given prior to, or within ten (10) days after, the birth of the Indian child shall not be valid.

(c) **Parent's Right to Withdraw Consent.** Any consent to termination of parental rights by a parent of an Indian child may be withdrawn by the parent at any time prior to the time the final order terminating the parent's rights.

Subd. 4. Notice to Parents Whose Rights Have Been Terminated. Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

(a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes, section 144.212, subdivision 11;

(b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in Minnesota Statutes, section 144.2252;

(c) the effect of failure to file either a consent to disclosure or an affidavit stating that the information on the original birth record shall not be disclosed; and

(d) the right of the parent to file an appeal pursuant to Rule 47.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. Following termination of parental rights of both of the child's parents, the court shall conduct review hearings pursuant to Rule 42.11.

(Added effective August 1, 2009; amended effective July 1, 2014.)

2008 Advisory Committee Comment

See the 2008 Advisory Committee Comment to Rule 49.03 regarding qualified expert witness.

42.09 Guardianship to the Commissioner of Human Services Upon Consent by the Child's Parent to Adopt Under Minnesota Statutes, Section 260C.515, Subdivision 3

Subdivision 1. Procedures. Without terminating parental rights of the parent consenting to adoption under Minnesota Statutes, section 260C.515, subdivision 3, the court may award guardianship to the commissioner of human services when both parents of the child consent or when the only legal parent of the child consents under the following procedures:

(a) **Consent and Identified Prospective Adoptive Home.** The court may accept the parent's voluntary consent to adopt under Minnesota Statutes, section 260C.515, subdivision 3, when there is an identified prospective adoptive parent who has agreed to adopt the child, and the responsible social services agency agrees to adoption by the identified prospective adoptive parent.

(b) **Copies of Consent and Order to Commissioner of Human Services.** The court shall forward to the Commissioner of Human Services one copy of the consent to adopt, together with a certified copy of the order transferring guardianship and legal custody to the Commissioner.

Subd. 2. When Consent is Irrevocable. Consent to adoption executed by a parent under Minnesota Statutes, section 260C.515, subdivision 3, is irrevocable upon acceptance by the court unless fraud is established and an order issued permitting revocation. In a matter governed by the Indian Child Welfare Act, 25 U.S.C. section 1913, a consent to adopt given by the parent of an Indian child is revocable at any time prior to finalization of the adoption.

Subd. 3. Ninety (90) Day Review. The matter shall be reviewed in court at least every ninety (90) days under the requirements of Rule 42.08, subdivision 5, as if a termination of parental rights had occurred.

(Added effective August 1, 2009; amended effective July 1, 2014.)

42.10 Order for Guardianship and Legal Custody When Parental Rights Are Terminated or When Parent Consents to Adoption

Subdivision 1. Procedures. In addition to the findings and order for termination of parental rights requirements of Rule 42.08, or when the parent consents to adoption of the child under Rule 42.09, the court shall order guardianship and legal custody according to the following requirements:

(a) **Order When Parental Rights of Both Parents Terminated.** When an order terminates the rights of the only known living parent of the child, the rights of both parents of the child, or where the rights of the other parent of the child were previously terminated, the court shall issue an order transferring guardianship and legal custody to:

(1) the Commissioner of Human Services;

(2) a licensed child placing agency; or

(3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Order When Parental Rights of Both Parents Not Terminated.** When the rights of both known, living parents are not terminated at the same time, the order terminating the rights of one parent, but not both parents, shall not award guardianship and legal custody to a person or entity until and unless the rights of both parents are terminated or the child is free for adoption due to consent of a parent to adoption under Minnesota Statutes, section 260C.515, subdivision 3. The order may continue legal custody of the child with the responsible social services agency.

(c) **Order When Parents Rights are Terminated in Separate Orders.** When the court issues separate orders terminating parental rights to a child or an order freeing a child for adoption due to consent by a parent to adoption under Minnesota Statutes, section 260C.515, subdivision 3, the second order terminating parental rights or freeing the child for adoption shall reference by filing date and jurisdiction the previous order and shall award guardianship to:

- (1) the Commissioner of Human Services;
- (2) a licensed child placing agency; or
- (3) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Subd. 2. Conditions - Limits on When Commissioner of Human Services May Become Guardian or Legal Custodian.

(a) **Limits on Appointment of Commissioner of Human Services When no Appointment under Probate Code.** The court may transfer guardianship to the Commissioner of Human Services if, upon petition to the juvenile court by a reputable person, including but not limited to an agency of the Commissioner of Human Services, and upon trial the court finds:

- (1) that both parents or the only known legal parent are or is deceased;
- (2) no appointment has been made or petition for appointment filed under Minnesota Statutes, sections 524.5-102 to 524.5-317; and
- (3) there is no individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

(b) **Responsible Social Services Agency Has Permanency Planning Responsibility.** The court shall order transfer of guardianship and legal custody of a child to the Commissioner of Human Services only when the responsible county social services agency had legal responsibility for planning for the permanent placement of the child and the child was in foster care under the legal responsibility of the responsible county social services agency at the time the court orders guardianship and legal custody transferred to the commissioner.

Subd. 3. Certified Copy of Orders. The court administrator shall forward one certified copy of the findings and order terminating parental rights and awarding guardianship and legal custody to the Commissioner of Human Services, the agency to which guardianship is transferred, or the individual to whom guardianship is transferred. The court also shall issue a separate order for guardianship and legal custody and provide a certified copy to the guardian.

Subd. 4. Copy of Order Terminating Guardianship. If the court issues an order, other than an order for adoption, terminating guardianship with the Commissioner of Human Services, an agency, or an individual, the court administrator shall send a copy of the order terminating the guardianship to the former guardian.

Subd. 5. Review When Child is Under the Guardianship of the Commissioner of Human Services. Following termination of parental rights of both of the child's parents, the court shall conduct review hearings pursuant to Rule 42.11.

(Added effective August 1, 2009; amended effective July 1, 2014.)

2008 Advisory Committee Comment

Rule 42.10, subdivision 2, reflects requirements of Minnesota Statutes, section 260C.325, subdivisions 1, paragraph (b), and 3. Rule 42.10, subdivision 3, requires the court to issue a separate order regarding the award of guardianship to enable the guardian to demonstrate legal decision-making authority for the child without disclosing all of the findings contained in the order terminating parental rights.

42.11 Review When Child is Under the Guardianship of the Commissioner of Human Services; Contested Adoptive Placements

Subdivision 1. Timing and Purpose. At least every ninety (90) days after issuing an order placing a child under the guardianship of the commissioner of human services, the court shall schedule a hearing to review the reasonable efforts of the responsible social service agency to finalize the child's adoption and the progress toward adoption consistent with the requirements of Minnesota Statutes, section 260C.607. The court may conduct review hearings less frequently if the requirements of Minnesota Statutes, section 260C.607, subdivision 8, paragraph (b), are met. Review hearings shall continue pending any appeal of the order terminating parental rights.

Subd. 2. Notice of Hearing. Notice of each hearing shall be provided by the court to persons listed in Minnesota Statutes, section 260C.607, subdivision 2.

Subd. 3. Content of Review Hearing. At each hearing the court shall review:

(a) the agency's reasonable efforts under Minnesota Statutes, section 260C.605, to finalize an adoption for the child as appropriate to the stage of the case;

(b) the child's current out-of-home placement plan required under Minnesota Statutes, section 260C.212, subdivision 1, to ensure the child is receiving all services and supports required to meet the child's needs as they relate to the child's:

- (1) placement;
- (2) visitation and contact with siblings;
- (3) visitation and contact with relatives;
- (4) medical, mental, and dental health; and
- (5) education; and

(c) when the child is age 16 and older and in foster care, the agency's planning for the child's independent living after leaving foster care, including how the agency is meeting the requirements of Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (11), consistent with the review requirements of Minnesota Statutes, section 260C.203.

Subd. 4. Relative's Request for Consideration. Any relative or the child's foster parent who believes the responsible social services agency has not reasonably considered the relative's or foster parent's request to be considered for adoptive placement as required under Minnesota Statutes, section 260C.212, subdivision 2, and who wants to be considered for adoptive placement of the child, shall bring a request for consideration to the attention of the court during a review required under this rule. The child's guardian ad litem and the child may also bring a request for a relative or the child's foster parent to be considered for adoptive placement. After hearing from the agency, the court may order the agency to take appropriate action regarding the relative's or foster parent's request for consideration under Minnesota Statutes, section 260C.212, subdivision 2, paragraph (b).

Subd. 5. Motion and Hearing to Order Adoptive Placement; Contested Adoptive Placement.

(a) **Timing and Purpose.** At any time after the court orders the child under the guardianship of the commissioner of human services, but not later than thirty (30) days after receiving notice required under Minnesota Statutes, section 260C.613, subdivision 1, paragraph (c), that the agency has made an adoptive placement, a relative or the child's foster parent may file a motion for an order for adoptive placement of a child who is under the guardianship of the commissioner if the requirements of Minnesota Statutes, section 260C.607, subdivision 6, are met.

(b) **Filing and Service of Motion.** The motion shall be filed with the court conducting reviews of the child's progress toward adoption under this subdivision. The motion shall be served on all individuals and entities listed in Minnesota Statutes, section 260C.607, subdivision 2.

(c) **Prima Facie Determination.** If the motion and supporting documents do not make a prima facie showing for the court to determine whether the agency has been unreasonable in failing to make the requested adoptive placement, the court shall dismiss the motion. If the court determines a prima facie basis is made, the court shall set the matter for evidentiary hearing.

(d) **Evidentiary Hearing Procedures and Standard of Proof.** At the evidentiary hearing, the responsible social services agency shall proceed first with evidence about the reason for not making the adoptive placement proposed by the moving party. The moving party then has the burden of proving by a preponderance of the evidence that the agency has been unreasonable in failing to make the adoptive placement.

(e) **Decision.** At the conclusion of the evidentiary hearing, if the court finds that the agency has been unreasonable in failing to make the adoptive placement and that the relative or the child's foster parent is the most suitable adoptive home to meet the child's needs using the factors in Minnesota Statutes, section 260C.212, subdivision 2, paragraph (b), the court may order the responsible social services agency to make an adoptive placement in the home of the relative or the child's foster parent.

(f) **Appeal.** An order denying or granting a motion for adoptive placement after an evidentiary hearing is an order which may be appealed by the responsible social services agency, the moving party, the child when age ten (10) or older, the child's guardian ad litem, or any individual who had a fully executed adoption placement agreement regarding the child at the time the motion was filed if the court's order has the effect of terminating the adoption placement agreement. An appeal shall be conducted according to the requirements of the Rules of Juvenile Protection Procedure.

(Added effective August 1, 2009; amended effective July 1, 2014.)

42.12 Permanent Custody to Agency

Subdivision 1. Requirements. The court may order permanent custody to the agency only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative nor termination of parental rights is in the child's best interests and all of the requirements of Minnesota Statutes, section 260C.515, subdivision 5, are met.

Subd. 2. Disruption. Pursuant to Rule 42.16, if the permanent custody to the agency placement disrupts, the responsible social services agency shall return the matter to court within ten (10) days of the disruption for review of the matter.

Subd. 3. Annual Review When Child is Ordered Into Permanent Custody to Agency.

(a) **Review of Appropriateness of Order for Permanent Custody to Agency.** When a child has been ordered into permanent custody of the agency, the court shall review the matter in court at least every twelve (12) months to consider whether:

(1) permanent custody to the agency continues to be the best permanent plan for the child; and

(2) any other permanency disposition order is in the best interests of the child.

(b) **Reasonable Efforts.** The court shall also review the reasonable efforts of the agency to:

(1) identify a specific foster home or other legally permanent home for the child, if one has not already been identified;

(2) support continued placement of the child in the identified home, if one has been identified;

(3) ensure appropriate services are provided to the child during the period of permanent custody to the agency, including assisting the child to build connections to the child's family and community; and

(4) plan for the child's independence upon the child's leaving permanent custody to the agency as required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (11).

(c) **Additional Requirements for Youth Age sixteen (16) or Older.** When the child is age sixteen (16) or older, the court shall review the agency's reasonable efforts to implement the independent living plan required under Minnesota Statutes, section 260C.212, subdivision 1, paragraph (c), clause (11), and the provision of services to the child related to the well-being of the child as the child prepares to leave foster care. The court's review shall include the actual plans related to each item in the plan necessary to the child's future safety and well-being when the child is no longer in foster care. The court shall make findings regarding progress toward or accomplishment of the following goals:

(1) the child has obtained a high school diploma or its equivalent;

(2) the child has completed a driver's education course or has demonstrated the ability to use public transportation in the child's community;

(3) the child is employed or enrolled in postsecondary education;

(4) the child has applied for and obtained postsecondary education financial aid for which the child is eligible;

(5) the child has health care coverage and health care providers to meet the child's physical and mental health needs;

(6) the child has applied for and obtained disability income assistance for which the child is eligible;

(7) the child has obtained affordable housing with necessary supports, which does not include a homeless shelter;

(8) the child has saved sufficient funds to pay for the first month's rent and a damage deposit;

(9) the child has an alternative affordable housing plan, which does not include a homeless shelter, if the original housing plan is unworkable;

(10) the child, if male, has registered for the Selective Service; and

(11) the child has a permanent connection to a caring adult.

(d) Agency Responsibility for Notice When Child is Seventeen (17). When the child is age seventeen (17), the responsible social services agency shall establish for the court that it has given the notice required under Minnesota Statutes, section 260C.451, regarding the right to continued access to services for children in foster care past age eighteen (18), including the right to appeal a denial of social services under Minnesota Statutes, section 256.045. If the agency is unable to establish that the notice, including the right to appeal a denial of social services, has been given, the court shall order the agency to give it.

Subd. 4. Modifying an Order for Permanent Custody to the Agency.

(a) Modification by Parent. A parent may seek modification of an order for permanent custody to the agency only upon motion and a showing by the parent of a substantial change in the parent's circumstances such that the parent could provide appropriate care for the child and that removal of the child from the child's permanent placement and the return to the parent's care would be in the best interest of the child.

(b) Modification by Agency. The responsible social services agency may ask the court to vacate an order for permanent custody to the agency upon a prima facie showing that there is a factual basis for the court to order another permanent placement under this rule and that the placement is in the child's best interests. The agency may ask the court to vacate an order for permanent custody to the agency and order another permanency disposition, including termination of parental rights based on abandonment if a parent fails to maintain visitation or contact with the child or participate in planning for the child. If the agency's request is to terminate parental rights, the county attorney shall file a petition under Rule 33 and the court shall proceed under Rule 34. If the agency's request is transfer of permanent legal and physical custody to a relative, the county attorney may file a motion under Rule 15 to modify the permanency order establishing permanent custody to the agency for the child. If a party entitled to notice of the motion opposes the transfer of permanent legal and physical custody to a fit and willing relative, the responsible social services agency and county attorney shall establish:

(1) that the relative is fit and willing; and

(2) that the transfer is in the best interest of the child.

Subd. 5. Order. Upon a hearing or trial where the court determines that there is a factual basis for vacating the order for permanent custody to the agency and that another permanent order regarding the placement of the child is in the child's best interests, the court may vacate the order for permanent custody to the agency and enter a different order for permanent placement that is in the child's best interests.

Subd. 6. Further Reasonable Efforts Not Required. The court shall not require further reasonable efforts to reunify the child with the parent or guardian as a basis for vacating the order for permanent custody to the agency and ordering a different permanent placement in the child's best interests.

Subd. 7. Jurisdiction. The court shall retain jurisdiction in a case where permanent custody to the agency is the permanent disposition as provided in Rule 51.

(Added effective August 1, 2009; amended effective July 1, 2014.)

42.13 Temporary Legal Custody to the Agency

Subdivision 1. Requirements for Compelling Reasons Why Permanent Legal and Physical Custody and Adoption is Not in the Child's Best Interests. The court may order temporary legal custody to the agency only if it approves the responsible social services agency's compelling reasons that neither an award of permanent legal and physical custody to a relative, nor termination of parental rights, is in the child's best interests and all of the requirements of Minnesota Statutes, section 260C.515, subdivision 6, are met.

Subd. 2. Periodic Review. If the court orders temporary legal custody to the agency, the court shall order in-court review hearings at intervals as will serve the child's best interests not to exceed a total of twelve (12) months after the date the order is entered for temporary legal custody to the agency pursuant to subdivision 3.

Subd. 3. Continued Review of Temporary Legal Custody to the Agency. If it is necessary for a child who has been ordered into temporary legal custody to the agency to be in foster care longer than one year, then not later than twelve (12) months after the time the child was ordered into temporary legal custody to the agency the matter shall be returned to court for a review of the appropriateness of continuing the child in foster care and of the responsible social services agency's reasonable efforts to finalize a permanent plan for the child. If it is in the child's best interests to continue the order for temporary legal custody to the agency past a total of twelve (12) months, the court shall set objectives for the child's continuation in foster care, specify any further amount of time the child may be in foster care, and review the plan for the safe return of the child to the parent.

(Added effective August 1, 2009; amended effective July 1, 2014.)

42.14 Hearing for Child on Trial Home Visit at Time for Commencement of Permanency Proceedings

Subdivision 1. Hearing. When the child has been ordered on a trial home visit which continues at the time the court is required to commence permanent placement determination proceedings under Rule 42.01, the court shall hold a hearing to determine the continued status of the child on the trial home visit and shall review:

- (a) the child's progress during the trial home visit;
- (b) the parent's progress during the trial home visit;
- (c) the agency's reasonable efforts to finalize the child's safety and permanent return to the care of the parent.

Subd. 2. Required Findings. The court shall make findings regarding the reasonableness of the agency's efforts to finalize the child's return home as the permanent order in the best interests of the child and may continue the trial home visit for a period not to exceed a total of six (6) months. If the court finds that the responsible social services agency has not made reasonable efforts to finalize the child's return home as the permanent order in the best interests of the child, the court may order other or additional efforts to support the child remaining in the care of the parent.

Subd. 3. Procedure When Child Returns to Foster Care. If an order for a trial home visit is continued at or after a hearing under subdivision 1 and the child is subsequently returned to foster

care, the court shall commence proceedings to determine an appropriate permanent order for the child not later than thirty (30) days after the child returns to foster care.

(Added effective August 1, 2009; amended effective July 1, 2014.)

42.15 Terminating Jurisdiction When Child is Continued in Voluntary Foster Care for Treatment Under Minnesota Statutes, Chapter 260D

Subdivision 1. Voluntary Placement as Prerequisite to Review. If a child has been ordered into foster care under Rule 30 or 41 and Minnesota Statutes, section 260C.178 or 260C.201, subdivision 1, and the conditions that led to the court's order have been corrected so that the child could safely return home except for the child's need to continue in foster care for treatment due to the child's disability, the child's parent and the agency may enter into a voluntary foster care agreement under Minnesota Statutes, chapter 260D.

Subd. 2. Motion and Petition to Terminate Jurisdiction. When the agency and the parent agree to voluntary placement of the child for treatment, the agency shall file a motion to terminate jurisdiction under Minnesota Statutes, section 260C.193, subdivision 6, which also terminates the order for foster care under Rule 30 or 41 and Minnesota Statutes, section 260C.178 or 260C.201, subdivision 1, together with the petition required under Rule 43.04, subdivision 2, and Minnesota Statutes, section 260D.07, paragraph (b), for permanency review and the court's approval of the voluntary arrangement.

Subd. 3. Timing of Motion and Petition. The motion and petition shall be filed no later than the time the agency is required to file a petition for permanent placement under Minnesota Statutes, section 260C.505, paragraph (a), but may be filed as soon as the agency and the parent agree that the child should remain in foster care under a voluntary foster care agreement, because the child needs treatment and voluntary foster care is in the child's best interest.

Subd. 4. Service. The court shall serve the motion and petition filed under subdivision 2 together with a notice of hearing personally, by U.S. mail, through the E-Filing System, or by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 5. Continuous Agency Authority for Foster Care. The parent and agency may execute the voluntary foster care agreement at or before the permanency review hearing required under Rule 43.04, subdivision 3, and Minnesota Statutes, chapter 260D.

Subd. 6. Permanency Review Hearing Required Under Rule 43.04. When the court grants the agency's motion to terminate jurisdiction under this rule, the court shall proceed on the Petition for Permanency Review regarding a Child in Voluntary Placement for Treatment and conduct the Permanency Review hearing required under Rule 43.04, subdivision 3.

(Added effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

2008 Advisory Committee Comment

Rule 42.15, subdivision 5, reflects the requirement under Minnesota Statutes, section 260D.09, paragraph (e), that, in order for the agency to have continuous legal authority to place the child, the parent and the agency shall execute a voluntary foster care agreement for the child's continuation in foster care for treatment prior to the termination of the order for foster care under Rule 30 or 41 and Minnesota Statutes, section 260C.178 or 260C.201, subdivision 1.

42.16 Review of Child Who Experiences Disruption of a Permanent Placement

Subdivision 1. Review Required When Child Removed from Permanent Placement Within One (1) Year. If a child is removed from a permanent placement disposition ordered under Rule 42, including transfer of permanent legal and physical custody to a relative pursuant to Rule 42.07 and Minnesota Statutes, section 260C.515, subdivision 4, or permanent custody to the agency pursuant to Rule 42.12 and Minnesota Statutes, section 260C.515, subdivision 5, or temporary custody to the agency pursuant to Rule 42.13 and Minnesota Statutes, section 260C.515, subdivision 6, within one year after the placement was made:

(a) the child shall be returned to the foster home where the child was placed immediately preceding the permanent placement; or

(b) the court shall conduct a hearing within ten (10) days after the child is removed from the permanent placement to determine where the child is to be placed. A guardian ad litem shall be appointed for the child for this hearing.

Subd. 2. Further Planning for Child. The court shall also review what further planning is appropriate to meet the child's need for safety and stability and to address the well-being of the child, including the child's physical and mental health and educational needs.

(Added effective August 1, 2009; amended effective July 1, 2014.)

2008 Advisory Committee Comment (amended 2014)

Rule 42.16, subdivision 2, delineates what orders are to be reviewed under Minnesota Statutes, section 260C.521, subdivision 4.

42.17 Reestablishment of the Legal Parent and Child Relationship

The procedures for reestablishing a legal parent and child relationship are set forth in Minnesota Statutes, section 260C.329.

(Added effective July 1, 2014.)